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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 355

NORMAN M. LITTELL, *Petitioner*,

v.

RAYMOND NAKAI

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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OPINIONS BELOW

The opinion of the court below (Appendix A, *infra*, pp. A2-A8) is reported at 344 F. 2d 486. The opinion of the District of Columbia Circuit (Appendix D, *infra*, pp. A16-A26), affirming the preliminary injunction that is incorporated in the complaint herein (R. 9; Ex. B, R. 23-28), is reported at 338 F. 2d 537. The opinion of the District Court for the District of Columbia (Appendix E, *infra*, pp. A27-A45), entered following trial on the merits of the case that is incorporated in the complaint herein (R. 8; Ex. A, R. 14-22), will be but has not yet been reported in F. Supp.; it is now partially reported at 93 Wash. L. Rep. 1059.

JURISDICTION

The judgment of the court below (Appendix B(1), *infra*, p. A9) was entered on April 15, 1965. A timely petition for rehearing was denied on June 1, 1965 (Appendix B(2), *infra*, p. A9). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether a United States District Court loses power to hear an action otherwise within its diversity jurisdiction under 28 U.S.C. § 1332 simply because the defendant is an Indian.

2. Whether an Indian defendant's immunity from judicial proceedings in State courts carries over so as to render him immune from a judicial proceeding in a Federal court that is otherwise within the diversity jurisdiction conferred by 28 U.S.C. § 1332.

3. Whether an action to enjoin tortious interference with a contract with an Indian tribe that has been approved by the Secretary of the Interior pursuant to R.S. § 2103 (25 U.S.C. § 81), that is null and void under the same statute in the absence of such approval, and that under long settled constitutional principles is beyond the reach of State power, involves a federal question under 28 U.S.C. § 1331 where the merits of the action turn on interpretation of the contract.

STATUTES AND TRIBAL CODE PROVISIONS INVOLVED

The Federal statutes and the provisions of the Navajo Tribal Code involved in this case are set forth in Appendix C, *infra*, pp. A10-A15.

STATEMENT

Th complaint herein, dismissal of which on jurisdictional grounds has been affirmed by the Ninth Circuit, sets forth and incorporates essentially parallel proceedings in the

District of Columbia Circuit. Accordingly, in order to place in their setting the jurisdictional issues presented by this petition, reference will from time to time be made to those parallel proceedings, the decisions in which for the convenience of the Court have been set out in Appendices D and E, *infra*, pp. A27-A99.[1]

A. Allegations of the present complaint

Petitioner (hereinafter usually "General Counsel") is a citizen of Maryland who since 1947 has been General Counsel and Claims Attorney of the Navajo Tribe of Indians (Cmplt., ¶ I, R. 3). He is presently serving under a contract with that Tribe which, together with twelve amendments thereto, was duly approved by the Secretary of the Interior (hereinafter "Secretary") or his authorized representative, pursuant to R.S. § 2103 (25 U.S.C. § 81; *infra*, Appendix C, pp. A10-A11); the contract runs until August 1967 (Complt., ¶ IV, R. 4).

Respondent (hereinafter "Chairman) is an Indian citizen of Arizona, and the Chairman of the Navajo Tribal Council (Cmplt., ¶ II, R. 4).

The contract itself provides in par. 12(a) thereof that it may be terminated only by the Navajo Tribal Council for good cause shown, upon 60 days' notice, and that in the event of disagreement between the parties as to the sufficiency of the cause the question shall be submitted to the Secretary (Cmplt., ¶ V, R. 4-5). The Tribal Council of 74 delegates is the governing body of the Navajo Tribe of Indians (Cmplt., ¶ VII, R. 7; 2 N.T.C. § 101, *infra*, p. A13); it has neither terminated the contract, nor proposed its termination, nor authorized or directed anyone to terminate it, nor authorized or proposed the General Counsel's suspension, nor expressed disapproval of or dissatisfaction with his services (Cmplt., ¶ VIII, R. 7).

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[1] All of the Appendices to this Petition are bound under a separate cover.

Although the Tribal Council unanimously approved an amendment to the General Counsel's contract as late as May 1963 (*ibid.*), the Chairman in the following month proceeded to Washington seeking the Secretary's assistance in terminating the General Counsel's contract, without the knowledge, consent, or approval of the Navajo Tribal Council. This action on his part was completely beyond his authority under the Navajo Tribal Code. (Cmplt., ¶ IX, R. 8).

On November 1, 1963, at the Chairman's request, the Secretary suspended the General Counsel and notified him that his contract was to be terminated and cancelled effective December 1, 1963 (Cmplt., ¶ X, R. 8). The General Counsel thereupon sued the Secretary in the United States District Court for the District of Columbia to enjoin the latter from terminating or cancelling the contract, and from suspending or otherwise interfering with the performance of his duties thereunder (Cmplt., ¶ X, R. 8-9); the complaint in the District of Columbia action was attached to and incorporated in the complaint herein (Ex. A, R. 14-22).

The United States District Court for the District of Columbia, after hearing the General Counsel's motion for a preliminary injunction and making findings of fact and conclusions of law, entered an order on November 29, 1963 (R. 9) that enjoined the Secretary and his subordinates, during the pendency of the action, from (1) terminating or cancelling the General Counsel's contract; (2) suspending or otherwise improperly interfering with the General Counsel's performance of said contract; and (3) stopping or preventing the ordinary course of payment to the General Counsel pursuant to R.S. § 2104 (25 U.S.C. § 82; *infra,* pp. A11-A12) of the agreed retainer fee due under said contract. This preliminary injunction was similarly attached to and incorporated in the complaint herein (Ex. B, R. 23-28).

It seems appropriate at this juncture to interrupt the recital of the allegations of the present complaint long enough to note that, on appeal by the Secretary, the foregoing preliminary injunction was affirmed by the District of Columbia Circuit, in an opinion emphasizing the Secretary's lack of power to cancel an Indian contract once approved by him pursuant to R.S. § 2103 (25 U.S.C. § 81; *infra,* pp. A10-A11). *Udall* v. *Littell,* 338 F. 2d 537. A copy of that opinion appears at Appendix D, *infra,* pp. A16-A26; rehearing was denied, certiorari was not sought.

To return to the complaint in the present case: Paragraphs 2 and 3 of the General Counsel's contract, set forth in ¶ VI of the complaint (R. 5-7), provide in pertinent part that the present petitioner is to act as General Counsel for and on behalf of the Tribe, and that he "shall report to the Tribal Council at any regular or special meeting on any matters pertaining to the legal affairs of the Tribe when in his opinion or that of the Chairman, the Advisory Committee, or the Tribal Council, the best interests of the Tribe so require."

Pursuant to those provisions, the General Counsel attended a meeting of the Navajo Tribal Council held at Window Rock, Arizona, on December 11, 1963, being of opinion that it was in the best interests of the Navajo Tribe of Indians for him to report to the Council on the Tribe's legal affairs (Cmplt., ¶ XI(a), R. 9-10). While there in attendance, the General Counsel was caused to be forcibly removed from the meeting by the Chairman, thus preventing the General Counsel from advising and reporting to the Tribal Council, and interfering with the General Counsel's performance of his contract (Cmplt., ¶ XI(a), R. 10).[2]

[2] The alleged complicity of the Secretary and two of his subordinates in this eviction was charged as a violation of the preliminary injunction issued in the District of Columbia, and hence a contempt.

The Chairman similarly effected the General Counsel's removal from a subsequent meeting of the Navajo Tribal Council held at Window Rock on February 3, 1964 (Cmplt., ¶ XI(b), R. 10-11).

The present complaint, filed on February 11, alleged (¶ XI(b) at R. 11) that the Navajo Tribal Council was still in session, and that, if the Chairman were not restrained, he would continue unlawfully to exclude the General Counsel from the Tribal Council's meetings; this would prevent the latter from fulfilling non-delegable duties and obligations to his client in legal work required to be immediately performed, failure of which might cause the client irreparable harm and damage for which he might be responsible, thus causing him immediate and irreparable injury and damage.

It was also alleged (Cmplt., ¶ XII, R. 11) that the Chairman had prohibited and prevented the Navajo Tribe of Indians from paying the General Counsel the accrued sums due under his contract, sums which then were in excess of $10,000, and which the Chairman, if not restrained, would continue to prohibit and prevent (¶ XII, R. 11-12).

After repeating the allegations of irreparable injury and asserting the absence of any adequate remedy at law (¶ XIII, R. 12), the complaint prayed an injunction to restrain the defendant and his associates and subordinates (a) from prohibiting the General Counsel's attendance and rendition of legal advice at Tribal Council meetings, (b) from prohibiting his reporting to the Tribal Council on matters pertaining to the Tribe's legal affairs, (c) from prohibiting or preventing payment of the sums due him under the terms of his contract with the Tribe, (d) from

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That proceeding, the decision thereon absolving those respondents, and the judge's changed opinion following the trial of the District of Columbia case on the merits, are set forth below at pp. A31, A46-A60.

otherwise preventing or interfering with him in the performance of his contract, and (e) for general relief (R. 12-13).

B. Proceedings in the U.S. District Court for Arizona

Simultaneously with the filing of the complaint, the General Counsel moved for a temporary restraining order to effectuate the prayers of the complaint (R. 29-30), supported by two affidavits, of which his own (R. 31-37) somewhat expanded but generally repeated the allegations of the verified complaint.

On the same day, the district court issued a restraining order directing the Chairman to refrain from prohibiting or preventing the General Counsel's attendance at meetings of, reporting to, or rendering legal advice to, the Navajo Tribal Council (R. 39-40).

That order also set down for hearing the General Counsel's motion for preliminary injunction (R. 40, 38), which was supported by two affidavits from members of the Tribal Council that set forth the need of its members to have legal documents explained to them orally (R. 45-48).

At this juncture the United States Attorney filed a "Representation of the Interests of the United States" (R. 41-44), in which it was asserted (R. 42-43) that "It is the position of the United States that this lawsuit is an intrusion into the political affairs of the Navajo Tribe and that this Court has no jurisdiction to control the operations of the tribal government," and that (R. 43) "The United States has a continuing interest in the preservation of the independence of tribal governments." He accordingly asked dismissal of the cause (R. 44).

It was later established, in the District of Columbia proceeding against the Secretary, that this intervention had been requested by the Department of the Interior (Fdg. 97, Appendix E, *infra*, at p. A86).

The district court thereupon entered an order of dismissal "for want of jurisdiction" (R. 49), citing *Williams* v. *Lee,* 358 U.S. 217; *Iron Crow* v. *Oglala Sioux Tribe,* 231 F. 2d 89 (C.A. 8); and *Native American Church* v. *Navajo Tribal Council,* 272 F. 2d 131 (C.A. 10).

C. Proceedings in the court below

On the General Counsel's appeal, the United States appeared as *amicus curiae* and participated in oral argument; its brief asserted (pp. 3-10) that "The complaint was correctly dismissed for three independent reasons," viz.: "A. The injunction sought is precluded by sovereign immunity from suit. B. The federal courts will not interfere with internal affairs of Indian tribes as sought by appellant. C. Equity will not specifically enforce an attorney's contract."

The court below affirmed (*infra,* pp. A2-A9). It held, first, that no federal question was involved, because nothing turned on the construction of R.S. § 2103 (25 U.S.C. § 81); second, citing *Williams* v. *Lee,* 358 U.S. 217, that Federal court jurisdiction in respect of matters relating to the Navajo Tribe would be as disruptive of the policy of freedom from outside interference as would State court jurisdiction; third, that there could be no diversity jurisdiction because, when "one is barred from recovery in the state court, he should likewise be barred in the federal court" (citing *Woods* v. *Interstate Realty Co.,* 337 U.S. 535, 538), and here the General Counsel if a citizen of Arizona "would be precluded from suit in the Arizona courts under the doctrine of *Williams* v. *Lee*"; and, fourth, that even though the Navajo Tribe was not a necessary party under *Arkansas* v. *Texas,* 346 U.S. 368, 369-370, the controversy was still one concerning its internal affairs. A petition for rehearing pointing out that *Erie R. Co.* v. *Tompkins,* 304 U.S. 64, has no application to jurisdiction, any more than it does to procedure (*Hanna* v. *Plumer,* 380 U.S. 460), was denied (*infra,* p. A9).

D. Parallel proceedings in the District of Columbia

As has been indicated, the General Counsel had obtained a temporary injunction against the Secretary from interfering with the performance of the attorney contract and from holding up payments due hereunder; in the present proceeding he sought but was denied similar relief against the Chairman.

During the pendency of this case in the Ninth Circuit, the merits of the District of Columbia suit were tried for two weeks; after the decision of the Ninth Circuit adverse to the General Counsel in his contest with the Chairman, the District Court for the District of Columbia entered a sweeping injunction in General Counsel's favor in his controversy with the Secretary (*infra,* pp. A96-A99). The opinion and findings of fact in latter decision are relevant here insofar as they show how the Secretary and the Chairman acted in concert.

The District of Columbia decision, rendered after the two-week long trial, shows that the Chairman sought and received the Secretary's assistance in seeking to eliminate the General Counsel (Opinion, *infra,* pp. A28-A30, A31; Fdgs. 10-12, 17, 21-29, 45-46, *infra,* pp. A62-A63, A64-A65, A66-A68, A72); that both combined in the latter's ejection from Tribal Council meetings (Opinion, *infra,* p. A31; Fdgs. 87-98; *infra,* p. A84); that while the Secretary was absolved from a charge of contempt arising out of his asserted complicity in those ejections because of insufficient evidence, "the conclusion reached by the Court in that case undoubtedly would have been different" had the Secretary's own subsequent testimony reflecting a fixed purpose to eliminate the General Counsel been earlier adduced (Opinion, *infra,* p. A31; Appendix I to Opinion, *infra,* pp. A46-A60; Fdgs. 99-100A, *infra,* pp. A86-A87); that the General Counsel had the legal right and duty to be present at meetings of the Navajo Tribal Council (Conc. 18, *infra,* p. A95); and that by reason of the col-

laboration between the Secretary and the Chairman in the holding up of the General Counsel's retainer vouchers under his contract in implementation of their purpose to eliminate him, a more sweeping injunction in respect of payments would be entered against the Secretary in order to protect the General Counsel's contract from further tortious interference (Fdgs. 107A-116, *infra,* pp. A89-A91; Conc. 19-22, *infra,* pp. A95-A96).

At the time this petition went to press, the time for noting an appeal to review the permanent injunction entered in the District of Columbia case had not yet expired.

REASONS FOR GRANTING THE WRIT

The ruling below warrants review, not so much because it leaves this petitioner remediless against a tortfeasor who was a collaborator and indeed a co-conspirator in a course of treatment that a United States District Judge after plenary hearing of the entire controversy "can only characterize * * * as brutal and shabby" (*infra,* p. A44), but primarily because the decision misconceives completely the position of Indians under the Constitution, and in consequence carves an immunity for Indian defendants out of the plain terms of the Congressional grant of diversity jurisdiction to the Federal courts.

The decision sought to be reviewed thus affects remedies under every existing and future contract with Indian tribes throughout the country. Those who have made or propose to make such contracts cannot sue the tribe, which enjoys sovereign immunity (*United States* v. *United States F. & G. Co.,* 309 U.S. 506), and under the ruling below they cannot sue an Indian interfering with such contracts, who is rendered immune from judicial control thereunder save in Indian tribunals that he himself appoints. Such a situation if permitted to continue will assuredly discourage the making of contracts with Indian tribes, a result that will disadvantage Indians far more seriously than prospective contractors.

First. In holding that a cause of action concededly within the terms of 28 U.S.C. § 1332 (*infra*, pp. A12-A13) was excluded from the competence of a United States District Court once it appeared the defendant was an Indian, for the assigned reason that, in the absence of diversity, the plaintiff could not, under *Williams* v. *Lee*, 358 U.S. 217, sue such a defendant in a State tribunal, the court below committed palpable error.

A. One basic mistake that it made was to confuse completely the scope of *Erie R. Co.* v. *Tompkins*, 304 U.S. 64.

The rule of that case, that a litigant bringing a diversity action in a Federal court stands in the same position as if he were bringing the same action in a State court, means that the same rules of substantive law must and will be applied, in contradistinction to the pre-*Erie* situation. E.g., *Black & White Taxicab Co.* v. *Brown & Yellow Taxicab Co.*, 276 U.S. 518. It has no application to procedure, as this Court held only last Term (*Hanna* v. *Plumer*, 380 U.S. 460), and we submit that it similarly has no application to jurisdiction.

To mention only a single example, no one can sue the United States in a State court; the United States is not amenable to State process nor subject to State jurisdiction. But Congress has given its consent to have the United States sued in the Federal courts in a wide variety of situations—e.g., actions under the Tucker Act, actions for tax refunds, actions arising out of tort claims. In all those instances a plaintiff would, plainly enough, be barred from recovery in the State courts, yet he can freely sue in the Federal courts.

B. So here, where there is involved an action against an Indian: Such an action is barred in the State courts, because the Constitution withdraws from the States all power over Indians in the absence of Congressional consent, under an unbroken line of decision extending from *Worcester* v. *Georgia*, 6 Pet. 515, through *Warren Trading*

Post v. *Tax Commission,* 380 U.S. 685, another of last Term's decisions. But until the ruling now sought to be reviewed, no decision ever held that an Indian was immune from restraint by the judicial arm of the United States. *Williams* v. *Lee,* 358 U.S. 217, relied upon below, neither so held nor even intimated. The Constitution carves out an exception in respect of Indian defendants from any State statute that in terms confers a general jurisdiction on a particular State tribunal, but where Congress provides for a particular head of Federal jurisdiction, as it did in the diversity statute, 28 U.S.C. § 1332, it has consistently with the Constitution legislated for Indian subjection to suit where, as here, the Indian citizen otherwise falls within the statutory provision.

C. Quite apart from the obvious jurisdictional differences between this case and *Williams* v. *Lee,* 358 U.S. 217, it may be noted that the remedy there available in the Navajo Tribal Courts was perfectly adequate for the cause of action in question in that case, viz., a demand for $361.22 in respect of goods sold and delivered (R. 1-2, No. 39, Oct. T. 1958). In the present case, however, the Tribal Court remedy is plainly inadequate, since here the gravamen of the complaint is that the Chairman of the Navajo Tribal Council, acting outside the scope of his authority, is tortiously interfering with petitioner's contractual relations with the Navajo Tribe (Cmplt., R. 3-21; *supra,* pp. 3-7), and that he is doing so in a situation where the members of the tribunal before which this charge must be brought, if the Tribal Courts indeed have exclusive jurisdiction as the Ninth Circuit held, are appointed by the Chairman himself, the prospective defendant, and are so appointed for probationary terms in the first instance. Moreover, the tribal judges' salaries are automatically increased at the expiration of the probationary period. See 7 N.T.C. §§ 61, 121, 181, *infra,* pp. A13-A15. Cf. *Tumey* v. *Ohio,* 273 U.S. 510; *Estes* v. *Texas,* No. 256, decided June 7, 1965, Point V of opinion.

We submit that it approaches the bizarre to conclude, as the court below did, that the mere existence of Tribal Courts, which plainly neither can nor do afford petitioner an adequate remedy, renders a United States court powerless in the premises despite the admitted circumstance that the present case falls squarely within the terms of 28 U.S.C. § 1332.

Second. The three alternative grounds advanced by the United States as *amicus curiae* below in support of the dismissal for want of jurisdiction (*supra,* p. 8) fall far short of sustaining the ruling below.

A. *Sovereign immunity.* The present action against the Tribal Chairman, alleging that his interference with petitioner's contract with the Navajo Tribe was beyond the scope of his authority as Chairman, no more impinges on the sovereign immunity of that Tribe than petitioner's parallel and virtually identical action (Ex. A, R. 14-22) against the Secretary of the Interior, under similar allegations of excess of authority, impaired the sovereign immunity of the United States.

B. *Specific performance of an attorney's contract.* Passing the point that an action to restrain tortious interference with a contractual relationship by a third party is, under familiar principles (*Arkansas* v. *Texas,* 346 U.S. 368, 369-370; Appendix E, *infra,* pp. A38-A39), not an action for specific performance of the contract, the conclusive answer here is that want of equity—the gist of this contention—is a defense wholly different from want of Federal jurisdiction, which was the ground assigned by both courts below. See *Norumbega Co.* v. *Bennett,* 290 U.S. 598, as explained in *California Water Serv. Co.* v. *Redding,* 304 U.S. 252, 255-256; *West Coast Exploration Co.* v. *McKay,* 213 F. 2d 582, 591-592 (D.C. Cir.), certiorari denied, 347 U.S. 989.

C. *Interference with internal affairs of Indian tribes.* We think that, inasmuch as the Navajo Tribe, the other party to the contract, was not a necessary party to any action to restrain tortious interference with that contract (*Arkansas* v. *Texas*, 346 U.S. 368, 369-370; Conc. 3, R. 27; Conc. 3, *infra*, p. A92), the present action could not possibly involve any interference with the internal affairs of that non-necessary party.

Moreover, it verges on cynicism to suggest, as the court below did (*infra*, p. A6), that dismissal of the present action is required by the policy of "freedom from outside interference" in reservation self-government. For the judicial findings made after petitioner's controversy with the Chairman and the Secretary had been fully aired (and after the date of the opinion below) show that the latter two officers confederated and collaborated to thwart tribal self-government: They short-circuited the Navajo Tribal Council, the governing body of the tribe (2 N.T.C. § 101; *infra*, p. A13), which alone had power to terminate petitioner's contract pursuant to its terms (Cmplt., ¶ 5, R. 4-5; D.C. Opinion, *infra*, pp. A29, A32-A37; Conc. 4, 5, *infra*, pp. A92-A93; Permanent Injunction, ¶¶ I(1), I(2), II(1), *infra*, pp. A96-A97, A97-A98), and undertook to terminate that contract on their own, because of "the realization that a majority of the Navajo Tribal Council were favorable to the [petitioner] and would not vote to terminate his contract" (Fdg. 36, p. A70; Opinion, p. A35). Thus the dismissal of the present action has the effect, not of fostering tribal self-government, not of freeing the Navajo Tribe of Indians from outside interference, but of rendering it helpless when the interference with the legislative processes of its governing body is effected by one of its own officers, who in this instance was acting outside the scope of his authority in combination with an officer of the United States who was similarly exceeding his authority.

The conclusive answer to the Ninth Circuit's assertion that the United States District Court in Arizona is power-

less to grant a remedy because of the policy that favors non-interference with an Indian tribe's government was given by the United States District Court for the District of Columbia: "Indian self-government should be a meaningful goal rather than an empty phrase" (*infra*, p. A45).

Third. Analysis of the *Erie-Tompkins* doctrine emphasizes that the present complaint involves a Federal question within 28 U.S.C. § 1331 (*infra*, p. A12), essentially because the origin of the right to be enforced is the Secretary's approval of the contract under R.S. § 2103 (25 U.S.C. § 81, *infra*, pp. A10-A11), an act without which the contract would be void. That right, accordingly, does not owe its authority to the lawmaking agencies of Arizona, cf. *Board of Commissioners* v. *Jackson County*, 308 U.S. 343, 349-350, for it pertains to relations with Indian tribes, an area wholly beyond the reach of the States. *Worcester* v. *Georgia*, 6 Pet. 515; *Warren Trading Post* v. *Tax Commission*, 380 U.S. 685.

Consequently the contract on which this action is based is a Federal contract, and its construction involves a question of Federal law, quite as much as the construction to be placed on securities issued by the United States (cf. *Clearfield Trust Co.* v. *United States*, 318 U.S. 363), quite as much as the construction to be placed on labor contracts in actions under § 301(a) of the Labor Management Relations Act of 1947 (*Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456-457; *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95, 102-104; *Humphrey* v. *Moore*, 375 U.S. 335, 352-354), quite as much as an action based on the substantive law of maritime torts (*Marine Cooks & Stewards* v. *Panama Steamship Co.*, 265 F. 2d 780, 782-783, 785-786 (C.A. 9), reversed on other grounds, 362 U.S. 365, 372).

The construction of the contract sought here to be protected against tortious interference therefore involves a Federal question within 28 U.S.C. § 1331, even in this case,

where the construction placed on it by the General Counsel is clearly right, viz., that the Secretary was not free to terminate it administratively once it had been approved pursuant to R.S. § 2103 (*Udall* v. *Littell,* 338 F. 2d 537 (D.C. Cir.), Appendix D, *infra,* pp. A16-A26), and that the General Counsel was empowered under its provisions to be present at meetings of the Navajo Council whenever in his own opinion the best interests of the Navajo Tribe so required (Appendix I, *infra,* at pp. A50-A51; Conc. 18, *infra,* p. A95; Permanent Injunction, ¶¶ I(3), II(5), *infra,* pp. A97, A98).

Fourth. The United States District Court for the District of Columbia found and held that the Secretary and the respondent Chairman had acted in concert to interfere with this petitioner's contractual rights (Opinion, *infra,* pp. A28-A30; Fdgs. 12, 17, 23-24, 108-113, *infra,* pp. A62-A68, A89-A91; Conc. 19, 21, *infra,* p. A95).

Petitioner succeeded, twice in that court and once in the District of Columbia Circuit, in establishing his right to relief against the Secretary (Prel. Inj., R. 23-28; *Udall* v. *Littell,* 338 F. 2d 537, *infra,* pp. A16-A26; Perm. Inj., *infra,* pp. A96-A99), but he has been unable, in the decision of the Ninth Circuit now sought to be reviewed, to obtain relief against the Secretary's collaborator and cohort.

We think that this factual conflict between circuits, arising out of the identical controversy, stands as an additional reason—if indeed one were needed—why review should be granted in the present case.

CONCLUSION

The decision below misapprehends the constitutional position of Indians and improperly curtails Federal jurisdiction in a situation that affects every present and future contract with Indian tribes. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

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